

Proposed Tied Pubs (Code and Adjudicator) (Scotland) Bill

Page 2: About you

Are you responding as an individual or on behalf of an organisation?

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Representative organisation (trade union, professional association)

Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

I am content for this response to be attributed to me or my organisation

Please provide your name or the name of your organisation

GMB Scotland

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

Q1. 1. Which of the following best expresses your view of establishing a statutory Scottish Pubs Code and Scottish Pubs Code Adjudicator? Please explain the reasons for your response.

Fully supportive

Comments:

Alcohol sold and consumed in pubs can help to support a responsible drinking culture and pubs have often been at the heart of many Scottish communities. However, over a number of years, pubs have been closing. Many places are being left without the local hubs provided by a mix of community facilities, including pubs. In the tied pub sector the issues are even more acute with licensees paying over the odds for their beer and often for their lease too. The tied pub model is trapping tied pub tenants in unsustainable

Q1. 1. Which of the following best expresses your view of establishing a statutory Scottish Pubs Code and Scottish Pubs Code Adjudicator? Please explain the reasons for your response.

circumstances and threatening the success of their business and too often their livelihood. Consumers see choice restricted in tied pubs and are very often unable to choose locally produced drinks over the multi-national brands pushed by the big pubcos. Tied arrangements reduce the places where locally produced beer and other drinks can be sold and so also affect employment in Scotland's drinks industry. Put simply the more Scottish products behind the bars of Scotland's remaining pubs, the more jobs will be sustained in our breweries.

Q2. 2. Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

No

Please explain the reasons for your response.

Across the UK, GMB have long campaigned for reform of the tied pub market because of our pub tenant members' experience of unfair practices at the hands of pubcos. The voluntary approach to stopping these practices simply hasn't worked. Following the achievement of a Pubs Code and Adjudicator in other parts of the UK, we are concerned that no progress has been made by the Scottish Government to provide a statutory code which could help to protect tied pub tenants. It is not acceptable that tied pub tenants in Scotland find themselves with less protection than those in similar circumstances elsewhere in the UK. Without a levelling of the playing field it is inevitable that pubcos will target what they see as a weaker regulatory environment in Scotland. 3.

Q3. 3. What do you think would be the main advantages, if any, of establishing a statutory Scottish Pubs Code and Adjudicator?

A statutory code and adjudicator means that Scottish tied pub tenants will no longer be worse off than their counterparts in England and Wales or compared to other Scottish publicans whose premises are free of tie. Tenants will gain access to redress should they be unfairly treated by a pubco and legal protections for tied pub tenants may also encourage pubcos to proactively improve their offer to tied tenants.

Tied publicans will be able to make choices about the drinks they stock which reflect the preferences of their customers rather than accept the distorting impact that tied arrangements can have on supply of particular products. GMB Scotland believes that this will ultimately be to the benefit of many more locally produced drinks and ultimately bring benefits to employment in the Scottish brewing sector too.

Q4. 4. What do you think would be the main disadvantages, if any, of establishing a statutory Scottish Pubs Code and Adjudicator?

The proposal does not force an end to tied arrangements where they are working well and therefore there are no potential disadvantages, only the ability to make choices and gain support where it is needed to challenge unfairness.

Q5. 5. Which of the following best expresses your view of establishing a Market Rent Only option for tenants as part of a Scottish Pubs Code?

Fully supportive

Please explain the reasons for your response

The market rent only option should be available to any pubco tenant who feels that their tied arrangements are no longer in the interests of their business. The availability of the option will encourage pubcos to

Q5. 5. Which of the following best expresses your view of establishing a Market Rent Only option for tenants as part of a Scottish Pubs Code?

consider their offer to their tenants in the round, taking account rents and supply costs, potentially resulting in improved tied terms to avoid the market rent only option being pursued. Where a market rent only option is agreed it will be because a tenant believes that it will be in the best interest of their business. Savings which result can then either improve the income for tenant publicans or be reinvested back into the pub, supporting employment and potentially freeing tenants to make different choices about the products they stock in line with customer demand. Any gain will be more likely to be to the local economy rather than to the multi-nationals who primarily benefit from the tied pub model at present.

Q6. 6. What do you think of the proposed contents of the Bill and the Code, and the scope of the Adjudicator's powers, as detailed on pages 17-18 of the consultation document?

The proposed powers and scope for the adjudicator are appropriate to deliver the aims of the bill as are the other provisions and the proposals for detail of the code.

Q7. 7. Which of the following best expresses your view of the Scottish Pubs Code Adjudicator being able to impose financial penalties for breaches of the Code?

Fully supportive

Please explain the reasons for your response.

It has already been shown, by the problems of the tied pub sector detailed over many years, that voluntary arrangements have not worked. It is vital that the code provides for the spread of better working relationships and mechanisms to resolve disputes but also the ability to apply reasonable sanctions where failures to operate fairly do exist. The Adjudicator in England and Wales has a similar power and without having, at least, parity, the Scottish Adjudicator will be seen to be a soft touch regulator which can be safely ignored by parties wishing not to accept the judgements which it comes to. A system of fines will be particularly effective, and necessary, to encourage business to modify their behaviour, systems or practices in order to avoid penalty for repeated failures of the same nature. Over time, and as the relationships between tied tenants and pubcos adapt and improve it is likely that levels of fines should then reduce and be applied only in exceptional cases. It should also be remembered that the ability to impose a fine does not mean that it will be the first or only option available to the adjudicator, and neither need a fine always be applied at the maximum level allowed.

Q8. 8. In terms of who the Scottish Pubs Code, and Market Rent Only option, should apply to, which of the following best expresses your view? If you choose option (a) you will automatically be taken to question 10. If you choose (b) or (c) you will automatically be taken to question 9.

(a) The Scottish Pubs Code - including the Market Rent Only option - should apply to all tied pubs in Scotland

Please explain the reasons for your response.

GMB Scotland believes that the Scottish Pubs Code – including the Market Rent Only option – should apply to all tied pubs in Scotland. The Scottish pub sector is not as diverse as in other parts of the UK and the application of thresholds would be complex and ultimately arbitrary. The proposed contents of the code and the role envisaged for the adjudicator are not so onerous as to present a serious burden on business. Indeed, the provisions should be easily achievable across the sector. Quite simply no responsible landlord should have anything to fear from the proposals, designed as they are to make the tied pub sector fairer for everyone involved.

Q9. 9. How should larger pubcos be defined (e.g. by size of turnover, number of tied pubs owned in Scotland (if so, how many, etc.))?

No Response

Page 17: Financial implications

Q10. 10. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
(a) the pub companies which own tied pubs (Pubcos)			X			
(b) Tied-pub tenants					X	
(c) Tied-pub customers					X	

Please explain the reasons for your response

(a) Improving the viability and profitability of local pubs can ultimately benefit everyone in the sector, but benefit to pubcos will ultimately be achieved through changed behaviour and practices which could very well make tied arrangements more attractive to tenants. (b) Improving the viability and profitability of local pubs can ultimately benefit everyone in the sector, but benefit to pubcos will ultimately be achieved through changed behaviour and practices which could very well make tied arrangements more attractive to tenants. (c) Customers can only benefit from successful local pubs which are responsive to their customers preferences and which invest in their premises and staff. A healthy brewing industry in Scotland will provide more choice for consumers and a more flexible purchasing environment will provide more places to showcase emerging and popular Scottish drinks brands.

Q11. 11. How do you think the associated costs of the proposal (predominantly the establishment and on-going running costs of a Scottish Pub Code Adjudicator) should be funded?

The appropriate arrangement would be by way of a levy on the pub owning companies who benefit most from the tied arrangements which the code and adjudicator would seek to regulate. Costs should not be raised from tied pub tenants seeking to refer their case to the adjudicator.

Page 19: Equalities

Q12. 12. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation?

Neutral (neither positive nor negative)

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Please explain the reasons for your response

The proposed bill has no specific implications, positive or negative, for equalities.

Q13. 13. In what ways could any negative impact of the Bill on any of the protected characteristics be minimised or avoided?

n/a

Page 21: Sustainability of the Proposal

Q14. 14. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having future disproportionate economic, social and/or environmental impacts?

Yes

Please explain the reasons for your response

Doing nothing is more likely to be unsustainable as the pub sector continues to decline and tied licenses remain the most vulnerable to rising costs and reducing profitability.

Page 22: General

Q15. 15. Do you have any other comments or suggestions on the proposal?

GMB Scotland believes that the Scottish brewing industry would benefit directly from a fairer relationship between the pub owning companies and their tied tenants. The current arrangements favour multi-national drinks brands over local products and reduce the diversity of Scotland's pub scene and reduce choice for pubgoers. The proposals being put forward in this consultation would represent a significant step towards a fairer market for supplying Scottish pubs with drinks products. Our members in the Scottish brewing industry believe that a fairer pub market will present significant opportunities for smaller Scottish brewers, creating and safeguarding employment in Scottish breweries.

Support for the propose legislation was also agreed at the Scottish Trades Union Congress in 2017 by resolution, and this is provided as part of this response below.

That this Congress notes that the provisions of the UK Pub Code Regulations 2016 and the powers of the Pub Code Adjudicator, which GMB was instrumental in campaigning for, do not apply to Scotland and, therefore, welcomes the campaign by GMB Scotland and the Scottish Licensed Trade Association, to secure overdue reform of the Scottish tied pubs market, whose current arrangements are iniquitous for many tied pub tenants in Scotland and disadvantageous for many smaller brewers, including Tennent Caledonian, who find their products locked out of tied pubs.

Congress believes that the Scottish pub market should not be more vulnerable to the expanding tied pub model without the protection of a statutory pub code, or tenants having access to full market option, if they choose. Nor should smaller brewers be disadvantaged by a market model, which puts the interests of the big PubCos first, rather than the local brewing industry, which is an important part of Scotland's distinctive food and drink sector, in the case of Tennent Caledonian, employing more than 500 people in the east end of Glasgow and brewing some of Scotland's most popular pub brands.

Congress, therefore, calls on the Scottish Government to stand up for Scottish tied pub tenants, workers in the Scottish brewing industry, including GMB members in Tennent Caledonian, and consumer choice,

Q15. 15. Do you have any other comments or suggestions on the proposal?

by supporting a statutory pubs code for Scotland as proposed by West of Scotland MSP, Neil Bibby's, Tied Pubs (Code and Adjudicator) (Scotland) Bill.